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PROVIDENT LIFE AND ACCIDENT  
6 INSURANCE COMPANY

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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 ROBERT H. CHRISTENSEN )  
13 Plaintiff, )  
14 v. )  
15 PROVIDENT LIFE AND ACCIDENT )  
INSURANCE COMPANY, )  
16 Defendant. )  
17 \_\_\_\_\_ )

Case No. C 07 04789 JF

**DEFENDANT'S RE-NOTICE OF  
MOTION AND MOTION TO  
DISMISS FOR FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF  
CAN BE GRANTED (FRCP 12(b)(6))**

Date: December 21, 2007  
Time: 9:00 a.m.  
Courtroom: 3

Honorable Jeremy Fogel

**TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on December 21, 2007 at 9:00 a.m., Defendant Provident Life & Accident Insurance Company ("Defendant") will move this court to dismiss the Third Cause of Action of Plaintiff's Complaint herein pursuant to FRCP 12(b)(6) because the Third Cause of Action fails to state a claim upon which relief can be granted because a cause of action for violation of Business & Professions Code 17200 cannot lie against an insurance company in an action over a claims dispute. Further, Defendant requests that the Court strike those portions of the Complaint that would support the Third Cause of Action.

The motion will be based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities and Declaration of John C. Ferry, and the pleadings and papers filed herein.

KELLY, HERLIHY, & KLEIN LLP

Dated: October 12, 2007

By



John C. Ferry  
Attorneys for Plaintiff  
PROVIDENT LIFE & ACCIDENT  
INSURANCE COMPANY

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